A Brief Guide to the Regulated Riparian Model Water Code

I. Chapter 1: Declarations of Policy
   A. Very broad policy interests
   B. Public interest definition
      1. Sees waters of state as resource owned by state in trust for public
      2. This is not equivalent to the public trust doctrine
      3. More that water is a resource that must maintain some public control, via regulation in the public interest
   C. Importance of efficient and productive use of water
      1. Many types of uses included in this focus
      2. Role of both efficiency and equity during shortfalls
      3. Legal security for water rights
      4. But, parties themselves may voluntarily modify or sell rights, subject to protection of 3rd parties
      5. Regulation of interbasin and interstate transfers
   D. Quantity/quality interaction
      1. Should this be done by single agency?
   E. Encouragement of Conservation
   F. Maintenance of Minimum flows
   G. Recognition of local interests
II. Chapter 2: General Provisions
   A. Basic rule: use is allowed only if it is Reasonable
   B. No prohibition based on location of use: ok if used on nonriparian or nonoverlying land
      1. This is big change from prior common law riparian reasonable use
      2. Also, big change from American reasonable use groundwater doctrine
   C. No unreasonable injury to other water rights
   D. Regulation of rights
      1. Rights themselves have protection as property
      2. But State can regulate these property rights in public interest
      3. Courts have unanimously ruled that this regulated riparian system is not a taking in moving from a traditional riparian system
      4. Exempted uses covered by reasonable use doctrine
   E. Definitions
      1. Various ones
      2. Reasonable Use: use of water as is necessary for economic and efficient use, without waste, without unreasonable injury to others, and in the public interest
III. Chapter 3: Waters Subject to Allocation
   A. All waters, with exception, subject to allocation
   B. Transboundary waters, and small sources exempted
   C. Protected minimum flows (these minimums are not allocated)
IV. Chapter 4: Administration
   A. State Agency & its powers
   B. Funding & authority

C. Fees
    1. Application fees
    2. Water use fees
D. Planning responsibilities
    1. Comprehensive Allocation Plan
    2. Drought management strategies
    3. Statewide data
E. Coordination with other branches & levels of government

V. Chapter 5: Enforcement & Dispute Resolution
A. Rights to hearings, except frivolous claims
B. Dispute resolution
C. Judicial review
D. Civil enforcement (notice of violations, penalties)
E. Criminal enforcement

VI. Chapter 6: Establishing a Water Right
A. Permit required for withdrawal of water
    1. Permit requirement does not create or destroy property rights
    2. Simply is regulation of existing right
    3. Similar to zoning of land uses
    4. But even more special public nature of water resources - regulation can be extended even further
    5. Small withdrawals are exempted
    6. May register withdrawals that are not subject to permits
B. Permit procedures
    1. Content of a permit
    2. Procedures on notice, contest of permit
C. Basis of water right
    1. Standards
        a. Proposed use is reasonable
        b. Withdrawal not exceed safe yield
        c. Consistent with allocation plan
    2. Determining whether use is reasonable: 6R-3-02
        a. Various factors recommended
        b. State can chose own factors
    3. Preferences among water rights: 6R-3-04 [same considerations as 6R-3-02]
    4. Prior investment in facilities to use or withdraw water is irrelevant to permit decision
    5. Standards for interbasin transfers
D. Coordination of water allocation and water quality regulation
    1. Allocation and transfer decisions done in manner to protect quality
    2. Permits may combine quantity and quality terms

VII. Chapter 7: Scope of the Water Right
A. Permit Terms & Conditions
B. Modification of water rights / permits
C. Restrictions during Water Shortages (Part 3)

VIII. Chapter 8: Multijurisdictional Water Transfers

IX. Chapter 9: Water Conservation & Supply Augmentation